



DPCC Fact Sheet: State of Texas v. U.S.

On November 20, 2014, the President announced that DHS would issue a series of immigration directives that strengthen border security, prioritize enforcement resources, and ensure accountability in our immigration system. On December 3, 2014, the Texas Attorney General joined by 21 states, one Attorney General, and three Governors brought suit in the U.S. District Court for the Southern District of Texas, Brownville Division, to challenge the legality of two of those immigration directives and to halt their implementation. On December 4, 2014, these States sought to temporarily suspend the implementation of those immigration directives until a court decides whether they are lawful. On February 16, 2015, the U.S. District Court for the Southern District of Texas granted the States' request and temporarily suspended the implementation of those immigration directives. [DHS, accessed [2/6/15](#)]

Background on State of Texas v. U.S.

December 3, 2014: Several States filed suit in the U.S. District Court for the Southern District of Texas.

- On December 3, 2014, several States brought suit in the U.S. District Court for the Southern District of Texas against the U.S., as well as the leadership of DHS and a number of the DHS component agencies.

December 4, 2014: Several States sought a preliminary injunction delaying implementation of the Deferred Action for Parental Accountability (DAPA) and expanded Deferred Action for Childhood Arrivals (DACA) initiatives until a court decides whether those initiatives are lawful.

- On December 4, 2014, several States sought a preliminary injunction delaying the implementation of the DAPA initiative, which provides temporary deportation relief for certain parents of U.S. citizens and lawful permanent residents, and an expansion of the 2012 DACA initiative, which provides temporary deportation relief for certain young people brought to the U.S. as children. [Complaint, [12/3/14](#)]
- These States allege that by implementing two of the Administration's immigration directives, the U.S. and other named defendants have violated their Constitutional duty to take care that the laws be faithfully executed (The Take Care Clause), as well as the Administrative Procedure Act (APA) (the law that "governs the process by which federal agencies develop and issue regulations"). [Complaint, [12/3/14](#); EPA, accessed [2/8/15](#)]
- The preliminary injunction seeks to delay implementation of the Administration's immigration directives until a final decision is made about whether those directives violated the Constitution and the APA.

- These States argue that a preliminary injunction is necessary because without one the Administration's immigration directives will cause them irreparable injuries. Specifically, these States allege that by “substantially increas[ing] the number of undocumented immigrants in the Plaintiff States”, the immigration directives will trigger a new wave of undocumented immigration. This increase, they further allege, will boost the business of human trafficking cartels, “exacerbate the risks and dangers imposed on the Plaintiffs by organized crime”, and force the Plaintiff states to “expend substantial resources on law enforcement, healthcare ... education”, and other benefits, some of which are required by federal and state law. [Complaint, [12/3/14](#); Motion for Preliminary Injunction, [12/4/15](#)]
- These States seek to stop and to declare unlawful the Administration's immigration directives, which they allege will cause them “dramatic and irreparable” harm. [Complaint, [12/3/14](#)]
- The U.S. District Court for the Southern District of Texas held a hearing on the States' request for a preliminary injunction on January 15, 2014, and on January 30, 2015, the Department of Justice (DOJ) filed its final response with the District Court. [Motion for Preliminary Injunction, [12/4/15](#); NILC, 2/2/15]

February 16, 2015: The U.S. District Court for the Southern District of Texas granted the States' request for a preliminary injunction blocking the implementation of the DAPA and expanded DACA programs until a court decides whether those programs are lawful.

February 23, 2015: The DOJ appealed the District Court's decision blocking the implementation of the DAPA and expanded DACA programs to the U.S. Court of Appeals for the Fifth Circuit.

March 12, 2015: The DOJ filed an emergency motion to lift the lower court's preliminary injunction with the U.S. Court of Appeals for the Fifth Circuit. [American Immigration Council, [4/13/15](#)]

April 17, 2015: The Fifth Circuit Court of Appeals held oral arguments on the Federal Government's emergency motion to lift the lower court's preliminary injunction. [American Immigration Council, [4/13/15](#); NYT, [4/17/15](#)]

May 26, 2015: A Three-Judge Panel of the U.S. Court of Appeals for the Fifth Circuit denied the DOJ's emergency request to lift the preliminary injunction issued by the lower court. [Bloomberg, [5/26/15](#)]

- As a result of the Fifth Circuit's decision, the lower court's preliminary injunction blocking implementation of the DAPA and expanded DACA programs remains in place. [NILC, 5/13/15]

The Fifth Circuit's Denial of the DOJ's Emergency Request to Lift the Lower Court's Preliminary Injunction is Not the Last Word on DACA or DAPA

The DOJ Could Seek Further Court Action on Its Emergency Request to Lift the Lower Court's Preliminary Injunction. The DOJ could ask a full panel of the Fifth Circuit Court of Appeals to reconsider its emergency request. It could also make an emergency request to the U.S. Supreme Court to lift the lower court's preliminary injunction. [NILC, 5/13/15]

The DOJ Awaits Further Action on Its Appeal of the Lower Court’s Decision Blocking the Implementation of the DAPA and Expanded DACA initiatives. The Fifth Circuit could affirm the lower court’s decision blocking the implementation of the DAPA and expanded DACA initiatives or reverse all or part of that decision. A hearing on the appeal is tentatively scheduled for July 6, 2015. There is no deadline “by which the court [must] issue an opinion after the hearing” takes place. Depending on the outcome of this appeal, either the DOJ or the States could ask for a full panel of the U.S. Court of Appeals for the Fifth Circuit to reconsider the lower court’s decision or for the U.S. Supreme Court to hear the case. [NILC, 5/13/15]

The Administration believes it will ultimately prevail in court. The DOJ and the Administration have stated that, even if the preliminary injunction is granted, they are confident that they will prevail as the case moves forward. [NILC, [1/13/15](#)]

The President Acted Within His Legal Authority

Prosecutorial discretion is widely recognized and accepted. The Supreme Court has affirmed the President’s broad authority to determine immigration enforcement priorities. In the 1985 *Heckler v. Cheney* case, the Supreme Court held that “an agency’s decision not to prosecute or enforce...is a decision generally committed to an agency’s absolute discretion.” Similarly, in the 2010 *Arizona v. U.S.* decision, the Supreme Court affirmed the authority of the executive branch not to seek the removal of certain aliens, noting that “[a] principal feature of the removal system is the broad discretion entrusted to immigration officials.” [CRS, [12/27/13](#); CRS, [7/13/12](#)]

Experts in immigration law have confirmed that the President has the authority to make broad changes to immigration enforcement. 136 constitutional lawyers, professors, and other experts signed onto a letter to President Obama stating, “[prosecutorial discretion] is a common, long-accepted legal practice in practically every law enforcement context... Discretion covers both agency decision to *refrain* from acting on enforcement... as well as decisions to *provide* a discretionary remedy like granting a stay of removal, parole, or deferred action.” [Legal Scholars, [9/3/14](#)]

You can find more background and information about the legality of the President’s immigration enforcement priorities on FloorWatch by clicking [HERE](#).